

## CHAPTER 57-39.2 SALES TAX

**57-39.2-01. (Effective through June 30, 2011) Definitions.** The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.
  - a. Distinct and identifiable products do not include:
    - (1) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, drycleaning garment bags, and express delivery envelopes and boxes.
    - (2) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.
    - (3) Items included in the definition of gross receipts.
  - b. The phrase "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
  - c. A transaction that otherwise meets the definition of a bundled transaction as defined in this section is not a "bundled transaction" if it is:
    - (1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
    - (2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
    - (3) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.
      - (a) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products.
      - (b) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis.

Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

- (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
- (4) The retail sale of exempt tangible personal property and taxable tangible personal property where:
  - (a) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and
  - (b) If the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.
- 2. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.
- 3. "Certified automated system" means software certified under chapter 57-39.4 to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the state, and maintain a record of the transaction.
- 4. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
- 5. "Commissioner" means the tax commissioner of the state of North Dakota.
- 6. "Computer software maintenance contract" is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both.
- 7. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
  - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
  - b. The total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

- 8. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are

not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

9. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
  - a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
  - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
  - c. Intended to affect the structure or any function of the body.
10. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
11. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
12.
  - a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
    - (1) The seller's cost of the property sold;
    - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
    - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
    - (4) Delivery charges; and
    - (5) Credit for any trade-in, as determined by state law.
  - b. "Gross receipts" also includes consideration received by the seller from third parties if:

- (1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (2) The seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (4) One of the following criteria is met:
    - (a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
    - (b) The purchaser provides identification to the seller to show that the purchaser is a member of a group or organization entitled to a price reduction or discount, however, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or
    - (c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
- c. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- d. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
  - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
  - (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
  - (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.

13. "Irrigation equipment repair parts" means repair or replacement parts for irrigation equipment which have a specific or generic part number assigned by the manufacturer of the irrigation equipment. The term does not include tires, fluid, gas, grease, lubricant, wax, or paint.
14. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:
  - a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
  - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
  - c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

15. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
16. "Mandatory computer software maintenance contract" is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.
17. "Optional computer software maintenance contract" is a computer software maintenance contract that the customer is not obligated to purchase as a condition to the retail sale of computer software.
18. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
19. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
20. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of

amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit

corporation or organization to its members or because of payment by its members of membership fees or dues.

24. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
25. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.
26. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
27. "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. The term does not include:
  - a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
  - b. Installation or maintenance of wiring or equipment on a customer's premises;
  - c. Tangible personal property;
  - d. Advertising, including directory advertising;
  - e. Billing and collection services provided to third parties;
  - f. Internet access service;
  - g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
  - h. Ancillary services; or
  - i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones.

**(Effective after June 30, 2011) Definitions.** The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies,

or is negotiable, based on the selection by the purchaser of the products included in the transaction.

- a. Distinct and identifiable products do not include:
  - (1) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, drycleaning garment bags, and express delivery envelopes and boxes.
  - (2) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.
  - (3) Items included in the definition of gross receipts.
- b. The phrase "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- c. A transaction that otherwise meets the definition of a bundled transaction as defined in this section is not a "bundled transaction" if it is:
  - (1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
  - (2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
  - (3) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.
    - (a) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products.
    - (b) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.
    - (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
  - (4) The retail sale of exempt tangible personal property and taxable tangible personal property where:
    - (a) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment,

over-the-counter drugs, prosthetic devices, or medical supplies;  
and

- (b) If the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.
2. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.
  3. "Certified automated system" means software certified under chapter 57-39.4 to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the state, and maintain a record of the transaction.
  4. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
  5. "Commissioner" means the tax commissioner of the state of North Dakota.
  6. "Computer software maintenance contract" is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both.
  7. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
    - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
    - b. The total weight of the taxable property compared to the total weight of all property in the shipment.The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.
  8. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.
  9. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
    - a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;

- b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
  - c. Intended to affect the structure or any function of the body.
10. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
11. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
12. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
- (1) The seller's cost of the property sold;
  - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
  - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
  - (4) Delivery charges; and
  - (5) Credit for any trade-in, as determined by state law.
- b. "Gross receipts" also includes consideration received by the seller from third parties if:
- (1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (2) The seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (4) One of the following criteria is met:

- (a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
  - (b) The purchaser provides identification to the seller to show that the purchaser is a member of a group or organization entitled to a price reduction or discount, however, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or
  - (c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
- c. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- d. "Gross receipts" does not include:
  - (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
  - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
  - (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
  - (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.
- 13. "Irrigation equipment repair parts" means repair or replacement parts for irrigation equipment which have a specific or generic part number assigned by the manufacturer of the irrigation equipment. The term does not include tires, fluid, gas, grease, lubricant, wax, or paint.
- 14. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:
  - a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;

- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

- 15. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- 16. "Mandatory computer software maintenance contract" is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.
- 17. "Optional computer software maintenance contract" is a computer software maintenance contract that the customer is not obligated to purchase as a condition to the retail sale of computer software.
- 18. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
- 19. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
- 20. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
- 21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property

situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
24. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
25. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

**57-39.2-02. Sales tax imposed.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

### 57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
  - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
  - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
  - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
  - d. Magazines and other periodicals.
  - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
  - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
  - g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
    - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
    - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
    - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
    - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
    - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
    - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other

than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

- h. A mandatory computer software maintenance contract for prewritten computer software.
  - i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.
2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04.

**57-39.2-03. Separate and additional tax on retail sales.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-39.2-03.1. Separate and additional tax on retail sales.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products.** Expired under S.L. 2003, ch. 539, § 25; S.L. 2005, ch. 582, § 2.

**57-39.2-03.3. Sales tax on sales through vending machines.** Gross receipts from the sale of tangible personal property costing sixteen cents or more sold through a coin-operated vending machine are subject to the sales tax imposed by chapter 57-39.2, and gross receipts from the sale of tangible personal property costing fifteen cents or less sold through a coin-operated vending machine are specifically exempted from the provisions of this chapter.

**57-39.2-03.4. Sales tax on carpet and drapes.** Repealed by S.L. 1995, ch. 571, § 1.

**57-39.2-03.5. Reduced rate for manufacturing machinery and equipment.** Repealed by S.L. 1991, ch. 680, § 2.

**57-39.2-03.6. Sales tax rate on natural gas sales.** Repealed by S.L. 2007, ch. 529, § 7.

**57-39.2-03.7. Surcharge on rental motor vehicles.** A company engaged in the business of renting motor vehicles for periods of fewer than thirty days shall collect a three percent surcharge on each rental contract at the time a vehicle of a gross vehicle weight of ten thousand pounds [4535.92 kilograms] or less is rented from the company in this state. A vehicle is considered rented in this state if possession is obtained by the renter in this state. The surcharge must be computed on the total dollar amount for the rental as stated in the rental contract, excluding taxes, fuel collections, or other ancillary products sold to customers such as collision damage waiver, supplemental liability protection, personal accident insurance, and personal effects coverage.

1. A surcharge under this section must be noted in the rental contract and collected in accordance with the terms of the contract.
2. On February fifteenth of each year, a company that collects surcharges under this section shall file a report with the commissioner stating the total amount of excise taxes paid under chapter 57-40.3 on the rental vehicles for the preceding calendar year and the total amount of rental motor vehicle revenues earned on rentals in this state for the preceding calendar year. All surcharge revenues collected during the calendar year by the company in excess of the total amount of excise taxes paid under chapter 57-40.3 during the calendar year by the company on rental motor vehicles must be remitted to the commissioner with the report and considered sales tax collections under this chapter.
3. For three years after filing the report under this section, the company shall retain copies of rental contracts and the commissioner may require the company to furnish copies of rental contracts for purposes of ensuring compliance with this section.

**57-39.2-03.8. Separate and additional sales tax on lodging.** Repealed by S.L. 2005, ch. 580, § 19.

**57-39.2-03.9. Sales tax on tobacco products.** Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, and other tobacco products includes any other taxes imposed on such merchandise or its use or on the retail or other sale of such merchandise.

**57-39.2-03.10. Bundled telecommunications services including exempt services.** In the case of a bundled transaction of services that includes telecommunications services, if the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services is subject to tax under this chapter and chapter 57-40.2 unless the provider can reasonably identify the nontaxable portion of the services from its books and records kept in the regular course of business.

**57-39.2-04. (Effective through June 30, 2015) Exemptions.** There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Gross receipts from sales of tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of North Dakota.
2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier.
3. Repealed by S.L. 1971, ch. 567, § 1.
4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility, when the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-10 or 15.1-07-11. This exemption does not apply to regular retail sales that are in direct competition with retailers. Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and

operated for the presentation of live public performances of musical or theatrical works on a regular basis.

5. Gross receipts from sales of textbooks to regularly enrolled students of a private or public school and from sales of textbooks, yearbooks, and school supplies purchased by a private nonprofit elementary school, secondary school, or any other nonprofit institution of higher learning conducting courses of study similar to those conducted by public schools in this state.
6. Gross receipts from all sales otherwise taxable under this chapter made to the United States, an Indian tribe, or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and the certificate must be presented to each retailer whenever this exemption is claimed. For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise.
7. Gross receipts from the sale of drugs sold under a doctor's prescription.
8. Gross receipts from sales of adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.
9. Gross receipts from sales of oxygen sold to any person who purchases it upon the written order of a doctor for the person's own use for medical purposes.
10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.
11. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds. The term "feed" includes drugs used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.
12. Gross receipts from a sale otherwise taxable under this chapter made to a person from an adjoining state which does not impose or levy a retail sales tax, under the following conditions:
  - a. The person is in the state of North Dakota for the express purpose of making a purchase.

- b. The person furnishes to the North Dakota retailer a certificate signed by the person in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the person was not in the state of North Dakota for the express purpose of making a purchase.
  - c. The sale is fifty dollars or more.
- 13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. However, gross receipts from the rental of any motor vehicle for fewer than thirty days are not exempt but taxes imposed under home rule authority do not apply to such rentals.
- 14. Repealed by S.L. 1969, ch. 528, § 24.
- 15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07. Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.
- 16. Gross receipts from the sale of newsprint and ink used in the publication of a newspaper.
- 17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, basic care facility, or similar institution to any patient or occupant.
- 18. Repealed by S.L. 1973, ch. 480, § 6.
- 19. Repealed by S.L. 1971, ch. 555, § 3.
- 20. Gross receipts from the sale of food supplies to any public school, to any parochial or private nonprofit school conducting courses of study similar to those conducted by public schools in this state, or to any nonprofit organization, for use by the public, parochial, or private school or nonprofit organization in sponsoring or conducting a lunch program or programs in and for any such public, parochial, or private nonprofit school.
- 21. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition if the sale of tickets or admissions to the exhibition of the film is subject to the sales tax imposed by this chapter.
- 22. Gross receipts from the leasing or renting of factory manufactured homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.
- 23. Food purchased by a student under a boarding contract with a college, university, fraternity, or sorority.

24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection:
- a. "Eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services; and
  - b. "Emergency medical services provider" means an emergency medical services operation licensed by the state department of health under chapter 23-27.
25. Gross receipts from the sale of Bibles, hymnals, textbooks, and prayerbooks sold to nonprofit religious organizations.
26. Gross receipts from sales of prosthetic devices, durable medical equipment, mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:
- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
    - (1) Can withstand repeated use;
    - (2) Is primarily and customarily used to serve a medical purpose;
    - (3) Generally is not useful to a person in the absence of illness or injury; and
    - (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.
  - b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:
    - (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
    - (2) Is not generally used by persons with normal mobility; and
    - (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment,

including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

27. Gross receipts from the sale of electricity.
28. Gross receipts from the leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid or is payable.
29. Gross receipts from all sales otherwise taxable under this chapter when made to any nonprofit organization for meals, including the containers, packages, and materials used for wrapping food items, for delivery to persons who are confined to their homes by illness or incapacity, including senior citizens and disabled persons, for consumption by such shut-ins in their homes.
30. Gross receipts from all sales of recreational travel trailers not exceeding eight feet [2.44 meters] in width or thirty-two feet [9.75 meters] in length which are designed to be principally used as temporary vacation dwellings when made to persons who are residents of other states which impose excise taxes upon registration of such recreational travel trailers.
31. Gross receipts from the sale of money, including all legal tender coins and currency, and from the sale of precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form.
32. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the

national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals, who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.

33. Repealed by S.L. 2005, ch. 580, § 19.
34. Gross receipts from the sale of byproducts, arising from the processing of agricultural products, for use in the manufacture or generation of steam or electricity.
35. Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota sales tax has previously been imposed.
36. Gross receipts from all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician, all sales of glucose usable for treatment of insulin reactions, all sales of urine and blood testing kits and materials, and all sales of insulin measuring and injecting devices, including insulin syringes and hypodermic needles.
37. Gross receipts from the sale of any aircraft taxable under the provisions of chapter 57-40.5.
38. Gross receipts from all sales of air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.
39. Gross receipts from sales of tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
40. Gross receipts from sales of tickets or admissions to, or sales made at, an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, "annual" means occurring not more than once in any calendar year.
41. Gross receipts from the initial sale of beneficiated coal.
42. Gross receipts from electronic gaming devices licensed by the attorney general under chapter 53-06.1.
43. Gross receipts from all sales made to a nonprofit medical research institute. For purposes of this subsection, "nonprofit medical research institute" means an institute that is a member of the association of independent research institutes, which is not a private foundation, and which is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3).
44. Gross receipts from all sales of coal that is exempt from the coal severance tax.
45. Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes.

46. Gross receipts from sales of tangible personal property purchased by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if the winner of the tangible personal property will be subject to sales or use taxes upon receiving the property.
47. Gross receipts from the sale of lottery tickets under chapter 53-12.1.
48. Gross receipts from all sales of tangible personal property purchased by a commerce authority and made a part of the infrastructure of a commerce authority, otherwise taxable under this chapter, if the personal property is placed within the geographic boundaries of the political subdivisions that created the commerce authority and is necessary and directly services infrastructure needs of the commerce authority. The commissioner shall issue a certificate of exemption to a political subdivision exempted by this subsection, and the political subdivision shall present the certificate of exemption to each retailer whenever the exemption is claimed.
49. Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.
50. Gross receipts from the sale at retail of hydrogen to power an internal combustion engine or fuel cell and equipment used directly and exclusively in production and storage of the hydrogen by a hydrogen generation facility in this state. For purposes of this subsection, "storage" means stationary and portable hydrogen containers or pressure vessels, piping, tubing, fittings, gaskets, controls, valves, gauges, pressure regulators, safety relief devices, and other accessories intended for hydrogen storage containers or pressure vessels.
51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.
52. Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.
53. Gross receipts from sales of natural gas or sales of fuels used for heating purposes.
54. Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:
  - a. "Specified digital products" means:
    - (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
    - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
    - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
  - b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

- c. For purposes of the definition of "digital audio work", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.
- d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

**(Effective after June 30, 2015) Exemptions.** There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Gross receipts from sales of tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of North Dakota.
2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier.
3. Repealed by S.L. 1971, ch. 567, § 1.
4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility, when the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-10 or 15.1-07-11. This exemption does not apply to regular retail sales that are in direct competition with retailers. Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.
5. Gross receipts from sales of textbooks to regularly enrolled students of a private or public school and from sales of textbooks, yearbooks, and school supplies purchased by a private nonprofit elementary school, secondary school, or any other nonprofit institution of higher learning conducting courses of study similar to those conducted by public schools in this state.
6. Gross receipts from all sales otherwise taxable under this chapter made to the United States, an Indian tribe, or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and the certificate must be presented to each retailer whenever this exemption is claimed. For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise.
7. Gross receipts from the sale of drugs sold under a doctor's prescription.
8. Gross receipts from sales of adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable

producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

9. Gross receipts from sales of oxygen sold to any person who purchases it upon the written order of a doctor for the person's own use for medical purposes.
10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.
11. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds. The term "feed" includes drugs used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.
12. Gross receipts from a sale otherwise taxable under this chapter made to a person from an adjoining state which does not impose or levy a retail sales tax, under the following conditions:
  - a. The person is in the state of North Dakota for the express purpose of making a purchase.
  - b. The person furnishes to the North Dakota retailer a certificate signed by the person in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the person was not in the state of North Dakota for the express purpose of making a purchase.
  - c. The sale is fifty dollars or more.
13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. However, gross receipts from the rental of any motor vehicle for fewer than thirty days are not exempt but taxes imposed under home rule authority do not apply to such rentals.
14. Repealed by S.L. 1969, ch. 528, § 24.
15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07. Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.
16. Gross receipts from the sale of newsprint and ink used in the publication of a newspaper.

17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, basic care facility, or similar institution to any patient or occupant.
18. Repealed by S.L. 1973, ch. 480, § 6.
19. Repealed by S.L. 1971, ch. 555, § 3.
20. Gross receipts from the sale of food supplies to any public school, to any parochial or private nonprofit school conducting courses of study similar to those conducted by public schools in this state, or to any nonprofit organization, for use by the public, parochial, or private school or nonprofit organization in sponsoring or conducting a lunch program or programs in and for any such public, parochial, or private nonprofit school.
21. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition if the sale of tickets or admissions to the exhibition of the film is subject to the sales tax imposed by this chapter.
22. Gross receipts from the leasing or renting of factory manufactured homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.
23. Food purchased by a student under a boarding contract with a college, university, fraternity, or sorority.
24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection:
  - a. "Eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services; and
  - b. "Emergency medical services provider" means an emergency medical services operation licensed by the state department of health under chapter 23-27.
25. Gross receipts from the sale of Bibles, hymnals, textbooks, and prayerbooks sold to nonprofit religious organizations.
26. Gross receipts from sales of prosthetic devices, durable medical equipment, mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:
  - a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
    - (1) Can withstand repeated use;
    - (2) Is primarily and customarily used to serve a medical purpose;
    - (3) Generally is not useful to a person in the absence of illness or injury; and
    - (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.

- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.
27. Gross receipts from the sale of electricity.
  28. Gross receipts from the leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid or is payable.
  29. Gross receipts from all sales otherwise taxable under this chapter when made to any nonprofit organization for meals, including the containers, packages, and materials used for wrapping food items, for delivery to persons who are confined to their homes by illness or incapacity, including senior citizens and disabled persons, for consumption by such shut-ins in their homes.
  30. Gross receipts from all sales of recreational travel trailers not exceeding eight feet [2.44 meters] in width or thirty-two feet [9.75 meters] in length which are designed to be principally used as temporary vacation dwellings when made to persons who are residents of other states which impose excise taxes upon registration of such recreational travel trailers.
  31. Gross receipts from the sale of money, including all legal tender coins and currency, and from the sale of precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form.
  32. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals, who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.
  33. Repealed by S.L. 2005, ch. 580, § 19.
  34. Gross receipts from the sale of byproducts, arising from the processing of agricultural products, for use in the manufacture or generation of steam or electricity.
  35. Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota sales tax has previously been imposed.
  36. Gross receipts from all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician, all sales of glucose usable for treatment of insulin reactions, all sales of urine and blood testing kits and materials, and all sales of insulin measuring and injecting devices, including insulin syringes and hypodermic needles.

37. Gross receipts from the sale of any aircraft taxable under the provisions of chapter 57-40.5.
38. Gross receipts from all sales of air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.
39. Gross receipts from sales of tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
40. Gross receipts from sales of tickets or admissions to, or sales made at, an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, "annual" means occurring not more than once in any calendar year.
41. Gross receipts from the initial sale of beneficiated coal taxed under chapter 57-60.
42. Gross receipts from electronic gaming devices licensed by the attorney general under chapter 53-06.1.
43. Gross receipts from all sales made to a nonprofit medical research institute. For purposes of this subsection, "nonprofit medical research institute" means an institute that is a member of the association of independent research institutes, which is not a private foundation, and which is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3).
44. Gross receipts from all sales of coal that is exempt from the coal severance tax.
45. Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes.
46. Gross receipts from sales of tangible personal property purchased by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if the winner of the tangible personal property will be subject to sales or use taxes upon receiving the property.
47. Gross receipts from the sale of lottery tickets under chapter 53-12.1.
48. Gross receipts from all sales of tangible personal property purchased by a commerce authority and made a part of the infrastructure of a commerce authority, otherwise taxable under this chapter, if the personal property is placed within the geographic boundaries of the political subdivisions that created the commerce authority and is necessary and directly services infrastructure needs of the commerce authority. The commissioner shall issue a certificate of exemption to a political subdivision exempted by this subsection, and the political subdivision shall present the certificate of exemption to each retailer whenever the exemption is claimed.
49. Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.
50. Gross receipts from the sale at retail of hydrogen to power an internal combustion engine or fuel cell and equipment used directly and exclusively in production and storage of the hydrogen by a hydrogen generation facility in this state. For purposes of this subsection, "storage" means stationary and portable hydrogen containers or pressure vessels, piping, tubing, fittings, gaskets, controls, valves, gauges, pressure regulators, safety relief devices, and other accessories intended for hydrogen storage containers or pressure vessels.

51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.
52. Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.
53. Gross receipts from sales of natural gas or sales of fuels used for heating purposes.
54. Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:
  - a. "Specified digital products" means:
    - (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
    - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
    - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
  - b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
  - c. For purposes of the definition of "digital audio work", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.
  - d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

**57-39.2-04.1. Sales tax exemption for food and food ingredients.** Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
  - a. Alcoholic beverages.
  - b. Candy or chewing gum.
  - c. Dietary supplements.
  - d. Prepared food.
  - e. Soft drinks containing fifty percent or less fruit juice.

- f. Tobacco.
2. For purposes of this section:
- a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
  - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
  - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.
  - d. "Prepared food" means:
    - (1) Food sold in a heated state or heated by the seller;
    - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
    - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
  - e. "Prepared food" does not mean:
    - (1) Food that is only cut, repackaged, or pasteurized by the seller.
    - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
    - (3) If sold without eating utensils provided by the seller:
      - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
      - (b) Food sold in an unheated state by weight or volume as a single item.
      - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
  - f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk

products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.
3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:
    - a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.
    - b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
    - c. If the prepared food ratio is greater than seventy-five percent, utensils are provided by the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
    - d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufacturers (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.
    - e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
    - f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
    - g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

**57-39.2-04.2. (Effective through June 30, 2015) Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and

related facilities for reducing emissions or increasing efficiency at an existing power plant.

- (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal in its natural form or beneficiated coal into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units are exempt from the tax imposed by this chapter.
  3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
  4. To receive the exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.

5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

**(Effective after June 30, 2015) Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.**

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units are exempt from the tax imposed by this chapter.

3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

**57-39.2-04.3. Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.**

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.
2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.
3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.
4. To qualify for exemption at the time of purchase, the manufacturer, recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer, recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.
5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer, recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.
6. For purposes of this section, the following definitions apply:
  - a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.
  - b. "Equipment":
    - (1) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and

- (2) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.
- c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.
- d. "Machinery" and "equipment":
  - (1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and
  - (2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.
- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
- f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.
- g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of commerce division of economic development and finance to be qualified under this subdivision.
- h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.
- i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
  - (1) To effect a direct physical change upon the tangible personal property.

- (2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
- (3) To test or measure the property on the production line or at a site in the location of production.
- (4) To transport, convey, or handle the tangible personal property during the manufacturing.
- (5) To package the product for sale and shipment.
- (6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

**57-39.2-04.4. Sales tax exemption for materials used to construct agricultural commodity processing facility.**

1. Gross receipts from sales of tangible personal property used to construct an agricultural commodity processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the facility must receive from the commissioner a certificate that the tangible personal property used to construct an agricultural commodity processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.
4. For purposes of this section, the following definitions apply:
  - a. "Agricultural commodity processing facility" means buildings, structures, fixtures, and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. The term does not include a facility that provides only storage, cleaning, drying, or transportation of agricultural commodities.
  - b. "Facility" means each part of the facility which is used in a process primarily for the processing of agricultural commodities, including receiving or storing agricultural commodities; transporting the agricultural commodities or product before, during, or after the processing; or packaging or otherwise preparing the product for sale or shipment.
  - c. "Tangible personal property" does not include tools or machinery used to construct an agricultural commodity processing facility and does not include machinery or equipment exempted under section 57-39.2-04.3.

**57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas.**

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, or refining system must receive from the tax commissioner a certificate that the tangible personal property used qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased and installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, processing, gathering, or refining system must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

**57-39.2-04.6. Sales and use tax exemption for materials used in construction or expansion of an oil refinery.**

1. Gross receipts from sales of tangible personal property used in expanding or constructing an oil refinery that has a nameplate capacity of processing at least five thousand barrels of oil per day in this state are exempt from taxes under this chapter.
2. The owner of the tangible personal property must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
3. This chapter and chapter 57-40.2 apply to the exemption under this section.

**57-39.2-04.7. (Effective through June 30, 2011) Sales tax exemption for equipment used in telecommunications infrastructure development.**

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, a telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the telecommunications

company must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

**57-39.2-05. Credit or refund for taxes paid on worthless accounts and repossessions.**

1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax must be paid upon the amount so collected. If a retailer's filing responsibility has been assumed by a certified service provider, the certified provider may claim on behalf of the retailer any bad debt allowance provided under this section. The certified service provider shall credit or refund to the retailer the full amount of any bad debt allowance or refund received under this section.
2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received, the retailer may deduct as a credit against the retailer's sales tax liability on the next return that the retailer is required to file the amount of sales tax the retailer paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract the retailer must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

**57-39.2-06. Credit to relief agency and local governmental units.** A relief agency may apply to the commissioner for refund of the amount of tax imposed under this chapter and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy. Such refunds may be obtained only in the following amount and in the manner and only under all of the following conditions:

1. On forms furnished by the commissioner, and during the time herein provided for the filing of quarterly tax returns by retailers, the relief agency shall report to the commissioner the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy.
2. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.
3. The relief agency must prove to the satisfaction of the commissioner that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this chapter, based upon such computation of gross receipts.

If the commissioner is satisfied that the foregoing conditions and requirements have been complied with, the commissioner shall refund the amount claimed by the relief agency.

**57-39.2-07. Sales tax to be added to purchase price and be a debt.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-39.2-08. Separate and additional tax on retail sales to be added to purchase price and be a debt.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-39.2-08.1. Separate and additional tax on retail sales to be added to purchase price and be a debt.** Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

**57-39.2-08.2. Sales tax to be added to purchase price and be a debt.**

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts.

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be carried to the third decimal place. Amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

**57-39.2-08.3. Sales tax on alcoholic beverages may be included in purchase price.** Expired under S.L. 2003, ch. 539, § 25; S.L. 2005, ch. 582, § 2.

**57-39.2-09. Unlawful act.** No retailer may advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this chapter shall be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer or, if added, that it or any part thereof will be refunded.

**57-39.2-10. Records required - Sales for resale exempt.**

1. Every retailer required to make a report and pay any tax under this chapter shall preserve such records of the gross proceeds of sale as the commissioner may require and every retailer shall preserve for a period of three years and three months all invoices and other records of goods, wares, or merchandise purchased for resale. All such books, invoices, and other records must be open to examination at any time by the commissioner or any of the commissioner's duly authorized agents.
2. Whenever a retailer accepts a resale certificate at the time of making a sale, which sale would otherwise be subject to the sales tax, and such resale certificate contains the sales tax permit number of the purchaser, such retailer making the sale is relieved from submitting the sales tax upon the purchase price of the merchandise sold. Whenever a person submits a false resale certificate to a retailer, the person submitting the certificate is personally liable for the tax on the sale.

### **57-39.2-10.1. Responsibilities of special events promoters - Penalty.**

1. A promoter or organizer of a special event at which ten or more special event vendors participate shall, within twenty days following a special event, provide to the tax commissioner a list identifying each participating special event vendor. The list must be in the form and manner prescribed by the tax commissioner and must contain the name and sales tax permit number of each special vendor. Records must be retained by the promoter or organizer to the same extent as all transactions involving sales or use tax as provided in section 57-39.2-10. For purposes of this section:
  - a. "Promoter" or "organizer" means a person or entity that organizes or promotes a special event that results in the rental, occupation, or use of a structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the provision of displays, promotional activities, or sale of tangible personal property or services by special event vendors.
  - b. "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on a recurring or irregular basis and where sales, displays, or promotional activities occur. Special events include auto shows, boat shows, gun shows, sport shows, knife shows, home shows, craft shows, flea markets, carnivals, circuses, bazaars, fairs, and art or other merchandise displays or exhibits.
  - c. "Special event vendor" means a person or entity making sales, providing displays, or otherwise engaging in promotional activities at a special event.
2. A special event does not include an event that is organized for the exclusive benefit of a nonprofit organization if all of the net proceeds of the retail sales of all vendors at the event inure to the benefit of a nonprofit organization.
3. A promoter or organizer of a special event who fails or refuses to comply with this section may be subject to a penalty of two hundred fifty dollars per event, which amount may be waived by the tax commissioner for good cause shown.

### **57-39.2-11. Return of gross receipts.**

1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or before the last day of the month following the close of the first quarterly period, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in the form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by the return, and any further information as the commissioner may require to enable the retailer correctly to compute and collect the tax herein levied. The commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto the retailer an extension of time not to exceed thirty days for making a return. If the extension is granted to any retailer, the time in which the retailer is required to make payment as provided for in section 57-39.2-12 must be extended for the same period but interest must be charged upon the amount of the deferred payment at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is allowed under this section if the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07. If the retailer's filing responsibility has been assumed by a certified

service provider, the retailer may authorize the certified service provider to claim on behalf of the retailer all or part of the compensation to which the retailer is entitled under sections 57-39.2-12.1 and 57-40.2-07.1.

3. Returns must be signed by the retailer or a duly authorized agent of the retailer and must contain a written declaration that they are made and subscribed under the penalties of this chapter. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

**57-39.2-12. Payment of tax - Bond - Creation of lien.**

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.
2. Every retailer, at the time of making the return required hereunder, shall compute and pay to the commissioner the tax due for the preceding period.
3. The commissioner, when in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this chapter, may require any person subject to such tax to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in such amount as the commissioner may fix, to secure the payment of any tax and penalties due or which may become due from such person. In lieu of such bond, securities approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax and penalties due. All moneys deposited as security with the commissioner under the provisions of this subsection must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the retail sales and use tax security trust fund. If any tax, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of tax, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the tax and penalties due. The commissioner, when in the commissioner's judgment it is no longer necessary

to require the deposit to be maintained by the person, shall certify that information to the director of the office of management and budget who shall pay the unused money to the person entitled thereto.

4. Remittances on account of tax due under this chapter may not be deemed or considered payment thereof unless or until the commissioner has collected or received the amount due for such tax in cash or equivalent credit.

**57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer required to report and pay monthly under section 57-39.2-12 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**57-39.2-13. Lien of tax - Collection - Action authorized.**

1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to said taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest must be determined by dividing the value of the entire

property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien aforesaid attaches at the time the tax becomes due and payable and continues until the liability for such amount is satisfied. For the purposes of this provision the words "due" and "due and payable" mean the first instant at which the tax becomes due.
3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.
6. Upon payment of the tax as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, as the facts may justify, without bond to enforce payment of any taxes and any penalties, or to foreclose the lien therefor in the manner provided for mortgages on real or personal property, and in such action shall have the assistance of the state's attorney of the county in which the action is pending.
8. It is expressly provided that the foregoing remedies of the state are cumulative and that no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements outlined in this section relating to tax liens on all real and personal property of the taxpayer to ensure payment of the taxes, including penalties, interest, and other costs, are self-explanatory.

**57-39.2-14. Permits - Application fee for reissuance.**

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed

by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association, partnership, or limited liability company, by a member or partner thereof; and in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of that person's authority. Any person registering under the agreement adopted under chapter 57-39.4 shall register in this state. Any person who is registered under the agreement is not required to sign the application and may register through an agent. Any person who is registered under such agreement may cancel its registration at any time but is liable for remitting any sales taxes collected before cancellation. Registration under the agreement and collection of tax does not in and of itself create nexus for other taxes or fees imposed by this state.

2. Upon determining that each applicant for a sales tax permit is a bona fide retailer, the commissioner shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued. Any transient merchant who is in the business of soliciting or making sales at retail to consumers shall, before soliciting such a sale from a consumer, exhibit to the consumer or prospective consumer the retail sales tax permit required by this section; for the purposes of this sentence the term "transient merchant" shall include any person, individual, copartnership, corporation, or limited liability company, either as principal or agent, who solicits, engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of such place, and who, for the purpose of carrying on such business, hires, leases, occupies, or uses, a building, structure, lot, tract, railroad car, motor vehicle, or display case or sample case of any kind for the exhibition and sale of such goods, wares, and merchandise.
3. Permits issued under the provisions of this section shall be valid and effective until revoked by the commissioner.
4. Whenever the holder of a permit fails to comply with any of the provisions of this chapter or any rules or regulations prescribed by the commissioner and adopted under this chapter, or whenever the holder of a permit shall file returns showing no tax due for four consecutive quarters, the commissioner, upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the holder's permit should not be revoked, may revoke the permit. The commissioner also shall have the power to restore licenses after such revocation.
5. Whenever the holder of a permit has had such a permit revoked for failure to comply with the provisions of this chapter or any rules and regulations prescribed by the commissioner and adopted under this chapter, the commissioner shall charge a fee of fifty dollars for the issuance or reissuance of such permit. However, if a permit was revoked for filing returns showing no tax due for four consecutive quarters, the commissioner shall charge only a fee of five dollars for the issuance or reissuance of such permit.
6. All permits in effect at the time this chapter takes effect are hereby continued and shall remain in full force and effect unless revoked as herein provided. However, the commissioner may issue a new form of permit to replace, at no charge to the permit holders, all permits previously granted and issued that have not been revoked or surrendered.

**57-39.2-14.1. Commissioner may authorize direct payment of sales and use tax.**

Upon application by any person, the commissioner may issue to the applicant, subject to such terms and conditions as the commissioner deems reasonable and necessary, a permit to be known as a direct payment permit authorizing such applicant to make direct payment to the commissioner of any sales or use tax imposed on any purchase, use, storage, or consumption in this state of tangible personal property or services by such applicant. Such applicant may elect to pay any such taxes directly to the commissioner and for that purpose may issue to the retailer selling or furnishing the tangible personal property or services subject to such taxes a direct payment certificate in the form prescribed by the commissioner, assuming the obligation to pay all such taxes, and the receipt of such certificate discharges such retailer from any duty to collect or liability for such taxes. Such direct payment permit may be revoked by the commissioner, with or without cause, at any time.

**57-39.2-15. Failure to file return - Incorrect return.** If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner shall determine the amount of tax due from any information as the commissioner may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, the person's stock on hand, and other factors. The commissioner shall give notice of the determination to the person liable for the tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever period expires later; if it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation herein provided for giving notice of the determination of tax due does not apply. The determination of tax due fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and under chapter 28-32.

**57-39.2-15.1. Extensions of time to perform sales tax audits.**

1. Before the expiration of time prescribed in section 57-39.2-15 for the assessment of tax, the commissioner and the taxpayer may agree in writing to an extension of time for the assessment of the tax. The tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. No extension may be for more than one year from the date of the extension agreement.
2. If a taxpayer agrees to an extension of time for assessment of tax, the period of time for refund claims will be similarly extended.

**57-39.2-15.2. Governor and manager liability.**

1. If a limited liability company required to hold a permit under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

2. If the governors, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the limited liability company.

**57-39.2-16. Appeals.** An appeal may be taken by the taxpayer to the district court of the county in which the taxpayer resides, or in which the taxpayer's principal place of business is located, within thirty days after the taxpayer has received notice from the commissioner of the commissioner's determination as provided for in section 57-39.2-15. The appeal must be taken pursuant to and in accordance with chapter 28-32.

**57-39.2-17. Service of notice.** Any notice, except notice of appeals, authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended by registered or certified mail addressed to such person at the address given in the last return filed by that person pursuant to the provisions of this chapter, or if no return has been filed, then such address as may be obtainable. The mailing of such notice is presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by giving of notice commences to run from the date of registration and posting of such notice.

**57-39.2-18. Penalties - Offenses.**

1. a. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due.
- b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
  - (1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.
  - (2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.
  - (3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.
  - (4) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.
2. Any person who sells tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas, and communication service at retail

in this state after that person's permit shall have been revoked, or without procuring a permit as provided in section 57-39.2-14, or who violates section 57-39.2-09, and the officers of any corporation or the managers of any limited liability company who so acts, is guilty of a class A misdemeanor.

3. Repealed by S.L. 1975, ch. 106, § 673.
4. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.
5. Any person failing to comply with any of the provisions of this chapter, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to said sales tax, shall be guilty of a class A misdemeanor.

**57-39.2-18.1. Corporate officer liability.**

1. If a corporation required to hold a permit issued under this chapter fails for any reason to file the required returns or to pay the tax due, the president, vice president, secretary, or treasurer of the corporation, jointly or severally, having control, or supervision of, or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation.

**57-39.2-19. Commissioner to administer chapter.** The commissioner is hereby charged with the administration of this chapter and the taxes imposed thereby. Such commissioner may prescribe all rules and regulations not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate the purposes, including the right to provide for the issuance and sale by the state of coupons covering the amount of tax or taxes to be paid under this chapter, if such method is deemed advisable by said commissioner.

**57-39.2-20. Tax, penalties, and other charges paid to commissioner - Disposition.** All fees, taxes, penalties, and other charges imposed and collected under this chapter must be paid to the commissioner in the form of a remittance payable to the commissioner, who shall transmit each payment monthly to the state treasurer to be deposited in the state treasury to the credit of the general fund.

**57-39.2-21. General powers.**

1. The commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income and receipts of any taxpayer, has power to examine or cause to be examined by any agent or representative designated by the commissioner books, papers, records, or memoranda; to require by subpoena the attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths; to examine witnesses and receive evidence; and to compel witnesses to produce for examination books, papers,

records, and documents relating to any matter which the commissioner has the authority to investigate or determine.

2. If the commissioner finds the taxpayer has made a fraudulent return, the costs of said hearing must be taxed to the taxpayer. In all other cases the cost must be paid by the state.
3. The fees and mileage to be paid witnesses and taxed as costs must be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs must be taxed in the manner provided by law in proceedings in civil cases. When the costs are taxed to the taxpayer, they must be added to the taxes assessed against said taxpayer and must be collected in the same manner. Costs taxed to the state must be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of said costs.
4. In cases of disobedience to a subpoena, the commissioner may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as contempt thereof.
5. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

**57-39.2-22. Commissioner may appoint agents and employees - Compensation - Bond.**

1. The commissioner may appoint such agents, auditors, clerks, and employees as the commissioner deems necessary, fix their salaries and compensation and prescribe their duties and powers, and may remove such persons so appointed. Each auditor appointed by the commissioner must have had at least three years' experience, or the education equivalent thereof, in the auditing and checking of books of account.
2. All such agents and employees must be allowed such reasonable and other necessary traveling expenses as may be incurred in the performance of their duties not to exceed, however, such amounts as are now or may hereafter be fixed by law.
3. The commissioner may require such of the officers, agents, and employees as the commissioner designates to give bond for the faithful performance of the duties in such sum and such sureties as the commissioner determines and the state shall pay the premiums on such bonds.
4. The commissioner may utilize the office of the treasurer of the various counties in order to administer this chapter and effectuate its purposes and may appoint the treasurers of the various counties as the commissioner's agents to collect any or all of the taxes imposed by this chapter. No additional compensation may be paid to said treasurer by reason thereof.

**57-39.2-23. Information deemed confidential - Certain releases of information authorized.** Except as provided by law:

1. a. The commissioner or an individual having an administrative duty under this chapter may not divulge or make known in any manner whatever the business affairs, operations, or information obtained from any person under any reporting requirement of this chapter, or by an investigation of any person in the

discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any return, or permit any return or copy or any book containing any abstract of particulars to be seen or examined by any individual.

- b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
    - (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;
    - (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
    - (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.
  - c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.
  - d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.
2. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the related report of an audit or investigation, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.
  3. The commissioner may furnish to workforce safety and insurance, the job insurance division of job service North Dakota, and the secretary of state, upon request of the respective agency, a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency. The commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, the name, address, and the permitholder's federal identification number for the sole purpose of identifying the owner of an unclaimed voucher authorized by the commissioner.
  4. The commissioner may furnish to a state agency or private entity a list of names and addresses of holders of permits issued under this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information under section 54-06-04.3. Any information provided may only be used for the purpose of

jointly publishing or distributing publications or other information as provided in section 54-06-04.3.

5. The commissioner may make information pertaining to city lodging taxes, city lodging and restaurant taxes, or city or county sales and use taxes, contained in tax returns, reports, related schedules and documents, and reports of an audit or investigation available upon request to no more than two duly elected or appointed members of the governing body of a city or county for which collection and administration of the tax is required by statute or a tax collection agreement administered under section 57-01-02.1. The governing body of the city or county or its members may not divulge or make known in any manner the business affairs, operations, or other information acquired from the commissioner under this subsection concerning any person, corporation, limited liability company, or other entity unless the disclosure is by judicial order and for tax administration purposes only.
6. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.
7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subsections 3, 4, and 5 of section 53-12.1-07.

**57-39.2-24. Correction of errors.** If it appears that, as a result of a mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount must be credited against any tax due, or to become due, under this chapter from the person who made the erroneous payment, or such amount must be refunded to such person; provided, that the person who made the erroneous payment shall present a claim for refund or credit to the commissioner not later than three years after the due date of the return for the period for which the erroneous payment was made or one year after the erroneous payment was made, whichever is later.

**57-39.2-25. Payment of refund.**

1. Whenever by any provisions of this chapter a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor, and the name of the payee to the office of management and budget, who shall thereupon draw a warrant on the general fund in the amount specified payable to the named payee. Interest of ten percent per annum must be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
2. If the tax commissioner disallows a claim for credit or refund, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner to deny a claim is final and irrevocable thirty days after the date of notice unless within the thirty-day period the taxpayer files a written protest. A written protest must be filed under rules adopted by the tax commissioner under chapter 28-32.

**57-39.2-26. Allocation of revenue.** Except as provided by sections 57-39.2-26.1 and 57-39.2-26.2, all moneys collected and received under this chapter must be paid into the state treasury and must be credited by the state treasurer to the general fund. Moneys deposited with the commissioner as security for the payment of tax, penalties, or costs due must be deposited and accounted for as provided in subsection 3 of section 57-39.2-12.

**57-39.2-26.1. Allocation of revenues among political subdivisions.** Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
  - a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:
    - (1) Thirty-two percent of the amount must be allocated equally among the counties; and
    - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
  - b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:
    - (1) Forty percent of the amount must be allocated equally among the counties; and
    - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
  - a. Nineteen and four-tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.
  - b. Thirty-four and five-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.

- c. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- d. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- e. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- f. Six and one-tenth percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- g. Three and four-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
- h. Two and six-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

**57-39.2-26.2. Allocation of revenues to senior citizen services and programs matching fund - Continuing appropriation.** Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to the amount of revenue that would have been generated by a levy of two-thirds of one mill on the taxable valuation of all property in the state subject to a levy under section 57-15-56 in the previous taxable year must be deposited by the state treasurer in the senior citizen services and programs fund during the period from July first through December thirty-first of each year. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax revenues which must be deposited in the fund as determined under this section. Revenues deposited in the senior citizen services and programs fund are provided as a standing and continuing appropriation for allocation as provided in subsection 5 of section 57-15-56. Any unexpended and unobligated amount in the senior citizen services and programs fund at the end of the 2005-07 biennium must be allocated among counties that levied the statutory maximum mill levy for taxable year 2004 in proportion to the dollars generated by those levies in those counties for that year but the allocation to any county may not exceed the difference between combined funding for the county's senior citizen services and programs for taxable year 2004 and the combined funding for those services and programs for taxable year 2006 and any remaining unexpended and unobligated amount at the end of any biennium must be transferred by the state treasurer to the state general fund.

**57-39.2-27. Disposition of excess tax collections.** Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this chapter, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer must be paid by the retailer to the commissioner in the quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against the retailer's sales tax liability on the next return that the retailer is required to file, the amount of sales tax properly refunded to the customer. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as a credit against future sales tax due from the retailer. If the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

**57-39.2-28. Refunds for Canadian residents.** The tax imposed under this chapter on gross receipts from sales made to a person who is a resident of Canada may be refunded under the following conditions:

1. The Canadian resident was in North Dakota for the express purpose of making a purchase, and not as a tourist.
2. The goods will be removed from North Dakota within thirty days of purchase and will be used permanently outside North Dakota.
3. The Canadian resident applies in writing to the commissioner on a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.
4. The qualifying sale is one in which the total gross receipts from each individual transaction, which may involve one or more items, equals twenty-five dollars or more.
5. The refund is fifteen dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the fifteen dollar limit.
6. Notwithstanding section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of the department of commerce division of tourism.

**57-39.2-29. Sourcing - Multiple points of use exemption.** Repealed by S.L. 2007, ch. 528, § 24.

**57-39.2-30. Conditional sales contract.** For purposes of the tax imposed by this chapter, on any sale made under a conditional sales contract or under other forms of sale in which the payment of the principal sum is extended over a period longer than sixty days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this chapter during that reporting period.

**57-39.2-31. Seller and certified service provider limited immunity.** A seller or certified service provider is immune from civil liability for charging and collecting the incorrect amount of sales or use tax in reliance on incorrect information provided by the tax commissioner regarding tax rates, boundaries, or taxing jurisdiction assignments. The tax commissioner will not be required to provide liability relief for errors resulting from the reliance on an address-based system for assigning tax jurisdictions as provided under the agreement adopted under chapter 57-39.4.

**57-39.2-32. Confidentiality of information obtained by certified service providers.** A certified service provider or any agent, employee, or other person acting under the authority of a certified service provider may not divulge or make known in any manner whatsoever the

business affairs, operations, or information obtained by the certified service provider in the discharge of its duties under this chapter.